

REMARKS

In the Final Office Action¹, the Examiner rejected claims 1-9, 19-27, 37-45, and 57-59 on the grounds of nonstatutory obviousness-type double patenting over claims 1-26 of U.S. Patent No. 7,190,773 to D'Silva et al. ("*D'Silva*"). Claims 1-9, 19-27, 37-45, and 57-59 remain pending in this application. Claims 10, 28, and 46 were previously cancelled, and claims 11-18, 29-36, and 47-56 were previously withdrawn from consideration. No additional claims are added or cancelled.

I. Rejection of Claims 1-9, 19-27, 37-45, and 57-59 under Non-statutory Obviousness-Type Double Patenting

The Final Office Action rejected claims 1-9, 19-27, 37-45, and 57-59 under the judicially-created doctrine of obviousness-type double patenting in light of claims 1-26 of *D'Silva*. Final Office Action at 2. Applicants respectfully traverse this rejection. However, in an effort to expedite prosecution, Applicants file concurrently herewith a Terminal Disclaimer with respect to *D'Silva*. Accordingly, Applicants respectfully request that the reconsideration and withdrawal of the double-patenting rejection of these claims.

The Final Office Action also appears to reject claims 10, 28, and 46 under the judicially-created doctrine of obviousness-type double patenting in light of *D'Silva*. *Id.* Applicants note that claims 10, 28, and 46 were cancelled in the Amendment submitted to the Office on September 17, 2009. As such, any rejection of these claims is moot.

¹ As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Final Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, ability to combine references, assertions as to patentability of dependent claims) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such in the future.

II. **Allowable Subject Matter**

Applicants thank the Examiner for indicating that claims 1-9, 19-27, 37-45, and 57-59 would be allowed over the prior art of record upon submission of a Terminal Disclaimer to overcome the double patenting rejection. Final Office Action at 3.

CONCLUSION

In view of the foregoing, Applicants submit that the remaining claims are in condition for allowance. Applicants, therefore, respectfully request the Examiner's reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this paper and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Robert E. Converse, Jr.
Reg. No. 27,432

Dated: March 22, 2010

By:



Jeffrey A. Berkowitz
Reg. No. 36,743
(202) 408-2710

